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CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 874

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CHESTER CHIANESE,

Petitioner,

vs.

THE UNITED STATES OF AMERICA.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

SIDNEY GOLDMANN,
Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES

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CHESTER CHIANESE,

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THE UNITED STATES OF AMERICA.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable Harlan Fiske Stone, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

The petition of Chester Chianese respectfully shows:

Your petitioner was tried with several others before the United States District Court, for the District of New Jersey, on an indictment containing several counts. Petitioner, with several other defendants, was convicted on count one of the indictment which charged that between the 1st day of May and the 3rd day of July, 1940, in the State of New Jersey, petitioner and several others wilfully, knowingly,

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unlawfully and feloniously conspired together to commit offenses against the United States, to wit:

(a) wilfully and feloniously to engage in and carry on the business of distillers;

(b) wilfully and feloniously to have in their possession and custody a certain still set up and intended for use in the unlawful production of distilled spirits subject to internal revenue tax without registering the same;

(c) wilfully and feloniously to make and ferment a large quantity of mash fit for and intended for distillation at a place other than a distillery;

(d) knowingly and feloniously to remove and be concerned in the removal of distilled spirits upon which the internal revenue tax had not been paid to places other than bonded warehouses;

(e) knowingly and feloniously to conceal and aid in the concealment of distilled spirits subject to internal revenue tax upon which said tax had not been paid.

The evidence adduced by the Government to substantiate said charge disclosed that on or about the 20th day of May, 1940, and for some time prior thereto, some other of the defendants were engaged in preparations for the installation of a still on a farm about two miles from Lakehurst, in the State of New Jersey, known as the Ingling farm. Before any still was brought on the farm Ingling, the owner of the farm, informed said defendants who were on said farm that they were being watched by the Federal Authorities and that they had better get off the farm premises. The farmer was holding a truck which he would not release unless he received $200, claimed by him for rent.

The evidence failed to show any participation of the petitioner in any of the activities on said farm. In fact the

evidence is conclusive to the effect that your petitioner was never on said farm. The only evidence in connection with your petitioner was to the effect that on May 20, 1940, your petitioner, with one of the defendants from the Ingling farm, sought out one Hopkins and stated to him that they were having trouble on the Ingling farm and requested him to ascertain for him what the trouble was. Said Hopkins informed the petitioner that Ingling, the farmer, was holding a truck and would not release it unless he received $200. There was also testimony to the effect that upon Hopkins' return with this information petitioner offered Hopkins money to take some of the defendants to the Ingling farm. There was also evidence to the effect that your petitioner was seen driving an automobile on Route No. 40, one of the highways in New Jersey, and he passed a truck (which truck was supposed to have come from the Ingling farm), without stopping, and continued on Route No. 40. The truck he passed turned off Route No. 40 into another highway.

There was further testimony adduced to the effect that on July 2, 1940, Federal Agents raided a farm known as the Kobrich farm, located in South Vineland, New Jersey, and there found a still in operation and also some of the defendants who, as the evidence disclosed, were also engaged in said activities on the Ingling farm. There was, however, no evidence connecting your petitioner with any of the activities on the Kobrich farm.

At the close of the Government's case and of the whole case petitioner moved before the court for a direction of an acquittal upon the ground that the evidence adduced did not establish your petitioner guilty of the crime of conspiracy charged in the indictment. The court overruled your petitioner's motion. Thereupon petitioner prayed for an exception, which was allowed. The case was submitted

by the court to the jury on count one of the indictment, with the result that your petitioner was found guilty, together with other defendants, of the crime of conspiracy charged in count one of the indictment, and on the 18th day of July, 1941, the court ordered that the petitioner be committed to the custody of the Attorney General for imprisonment for the term of eighteen months and that your petitioner pay a fine of $500.

Your petitioner appealed said conviction to the United States Circuit Court of Appeals for the Third Circuit. The learned Circuit Court of Appeals on December 19, 1941, affirmed the judgment of the District Court without an opinion.

Reasons Relied on for the Allowance of Writ.

The decision of said Circuit Court of Appeals in affirming the judgment of conviction of your petitioner is an erroneous decision, in that, it is in conflict with the weight of authority.

The verdict of the jury rests upon speculation, suspicion and conjecture and not upon substantial evidence that your petitioner was associated in the unlawful enterprise.

The weight of judicial authority is to the effect that a conviction cannot be sustained upon speculation, suspicion and conjecture, and for that reason the said Circuit Court of Appeals should have sustained petitioner's assignments of error and reversed the judgment of conviction of the learned District Court for the District of New Jersey.

WHEREFORE your petitioner prays that a writ of certiorari under the seal of this Court, directed to the United States Circuit Court of Appeals for the Third Circuit, commanding said court to certify and send to this Honorable Court a full and complete transcript of the record of the proceedings of the said Circuit Court of Appeals had in the

case numbered and entitled on its docket No. 7790, October Term, 1941, United States of America, appellee, *vs.* Chester Chianese, defendant-appellant, to the end that said cause may be reviewed and determined by this Honorable Court as provided by law; and that your petitioner may have such other and further relief or remedy in the premises as to this Honorable Court may seem appropriate; and that the judgment of the said United States Circuit Court of Appeals for the Third Circuit may be reversed by this Honorable Court;

And your petitioner will ever pray.

SIDNEY GOLDMANN,
Attorney and of Counsel for Petitioner.

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